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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA

5 v.

20 CR 411 (RA)
Plea

6 YOEL ABRAHAM

7 Defendant

8 -----x

9 New York, N.Y.
10 October 26, 2023
11 10:15 a.m.

12 Before:

13 HON. RONNIE ABRAMS

District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

16 JILAN J. KAMAL

Assistant United States Attorney

17 SHER TREMONTE LLP

Attorney for Defendant

18 JUSTINE A. HARRIS

19
20 ALSO PRESENT: SAMANTHA LUEVAMOS, Paralegal (Def)

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(In open court; case called)

DEPUTY CLERK: Counsel, please state your name for the record.

MS. KAMAL: Good morning, your Honor. Jilan Kamal on behalf of the United States.

THE COURT: Good morning.

MS. HARRIS: Good morning, your Honor. Justine Harris for Mr. Yoel Abraham. With the Court's permission, my paralegal Samantha Luevamos is at counsel table as well.

THE COURT: Yes. Good morning to all of you. I'm sorry to get started a little late today.

I had thought that Mr. Abraham was pleading guilty pursuant to a plea agreement pursuant to which he was pleading guilty to an information, but I understand now he is pleading guilty just to the indictment. Can you clarify for me exactly which counts he's pleading guilty to.

MS. HARRIS: Your Honor, he's pleading to all three counts, Counts One, Two and Three alleging wire fraud, wire fraud conspiracy and 18 U.S.C. 1957.

THE COURT: Understood.

Mr. Abraham, I understand that you intend to plead guilty to Counts One, Two and Three today of the indictment. Is that correct?

THE DEFENDANT: Yes, your Honor.

THE COURT: So I'm going to start by asking you

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1 questions to ensure that you're competent to plead guilty. I
2 ask these questions of every defendant in this situation.
3 First though, I'm going to ask my deputy to swear you in, okay?

4 (Defendant sworn)

5 THE COURT: First, how old are you?

6 THE DEFENDANT: 31.

7 THE COURT: Sorry. How old are you?

8 THE DEFENDANT: 31.

9 THE COURT: 31. I'm sorry. I had trouble hearing
10 you. How far did you go in school?

11 THE DEFENDANT: Yeshiva.

12 THE COURT: Did you complete Yeshiva?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you now or recently been under the
15 care of a medical professional, or psychiatrist or other mental
16 healthcare provider?

17 THE DEFENDANT: No.

18 THE COURT: Have you ever been hospitalized for mental
19 illness, alcoholism or drug addiction?

20 THE DEFENDANT: No.

21 THE COURT: In the past 24 hours, have you taken any
22 drugs, medicine, pills or drunk any alcoholic beverages?

23 THE DEFENDANT: No.

24 THE COURT: Is your mind clear today?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand what's happening in
2 these proceedings?

3 THE DEFENDANT: Yes.

4 THE COURT: Does either counsel have any doubt as to
5 Mr. Abraham's competence to plead guilty at this time?

6 MS. KAMAL: No.

7 MS. HARRIS: No, your Honor.

8 THE COURT: Have you had enough time and
9 opportunity -- well, let me just start by saying on the basis
10 of Mr. Abraham's responses to my questions, and my observations
11 of his demeanor here in court and representations of counsel, I
12 find that he is fully competent to enter an informed plea of
13 guilty at this time.

14 Have you had enough time and opportunity to discuss
15 your case with your attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you discussed with her the nature of
18 the charges you intend to plead guilty to, any possible
19 defenses to those charges, and the rights you're giving up?

20 THE DEFENDANT: Yes.

21 THE COURT: Has your attorney discussed with you the
22 consequences of pleading guilty?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you satisfied with your attorney's
25 representation of you?

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1 THE DEFENDANT: Yes.

2 THE COURT: So now I'm going to explain certain
3 constitutional rights that you have. These are rights that you
4 will be giving up if you enter a guilty plea. First, under the
5 Constitution and laws of the United States, you have a right to
6 plead not guilty to the charges in the indictment.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: If you did plead not guilty, you'd be
10 entitled under the Constitution to a speedy and public trial by
11 a jury of those charges. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: In advance of trial, if you were to go to
14 trial, you would have the opportunity to seek suppression of
15 any or all of the evidence against you on the basis that it was
16 obtained in violation of the Constitution.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: At trial, again, if you chose to go to
20 trial, you would be presumed innocent. That means that you
21 would not have to prove that you were innocent. Instead, the
22 government would need to prove your guilt beyond a reasonable
23 doubt before you could be found guilty. So even if you did
24 nothing or said nothing at trial, you could not be convicted
25 unless a jury of 12 people agreed unanimously that you are

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1 guilty. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: During trial, if you chose to go to trial,
4 the witnesses for the prosecution would have to come to court
5 and testify in your presence, where you could see them and hear
6 them, and your lawyer could cross-examine them. If you wanted
7 to, your lawyer could offer evidence on your behalf. You would
8 be able to use the court's power to compel or force witnesses
9 to come to court to testify truthfully in your defense even if
10 they didn't want to come.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Again, if you went to trial, you would
14 have the right to testify if you wanted to, but you would also
15 have the right not to testify. And if you chose not to
16 testify, that could not be used against you in any way. No
17 inference or suggestion of guilt could be made from the fact
18 that you chose not to testify.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: At trial, and at every stage of your case,
22 you would be entitled to be represented by an attorney. And if
23 you could not afford an attorney, one would be appointed at
24 public expense to represent you; that means free of cost.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: If you were convicted if you went to
3 trial, you would have the right to appeal that verdict to a
4 higher court.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: As I said before, you have the right to
8 plead not guilty. So even as you sit here right now for
9 purposes of entering a guilty plea, you can change your mind
10 and you can decide to go to trial. But if you do plead guilty,
11 and I accept your plea, there will be no trial, and you will
12 give up the rights that I just described. Do you understand
13 that?

14 THE DEFENDANT: Yes.

15 THE COURT: If you plead guilty, all that will remain
16 to be done is for the Court, for me, to impose sentence. I'm
17 not going to do that today. I'm going to enter a judgment of
18 guilty, and I will sentence you after considering whatever
19 submissions I get from your lawyer, from the government, as
20 well as a presentence report prepared by the probation
21 department. But there will be no appeal with respect to
22 whether the government could use the evidence it has against
23 you or with respect to whether you did or did not commit the
24 crime. Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: If you plead guilty, you will also be
2 giving up your right not to incriminate yourself, since I'm
3 going to be asking you questions today about what you did in
4 order to satisfy myself that you are in fact guilty as charged.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Thank you.

8 So what I am going to ask now, I'm going to ask the
9 government to go through and for each of the three counts to
10 state the elements of the counts and the maximum penalties as
11 well.

12 MS. KAMAL: Yes, your Honor.

13 With respect to Count One of the indictment, which
14 charges the defendant with conspiracy to commit wire fraud in
15 violation of 18 U.S.C., Section 1349, the conduct has two
16 elements -- sorry -- the offense has two elements:

17 First, that two or more people agreed to engage in a
18 scheme to defraud that involved the use of interstate wires as
19 charged in the indictment.

20 And, second, that the defendant knowingly entered that
21 agreement knowing its objective to commit wire fraud and
22 intending to join together with at least one other conspirator
23 to achieve that objective.

24 The objective of the conspiracy, wire fraud, which is
25 also Count Two, has three elements:

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1 First, that there existed a scheme or artifice to
2 defraud or to obtain money or property by materially false and
3 fraudulent pretenses, representations, or promises.

4 Second, that the defendant knowingly participated in
5 the scheme or artifice to defraud with knowledge of its
6 fraudulent nature and with specific intent to defraud.

7 And, third, that in executing that scheme, the
8 defendant used or caused the use of interstate wires.

9 With respect to Count Three, monetary transactions
10 involving crime proceeds, that offense has four elements:

11 First, that the defendant engaged in a monetary
12 transaction of greater than \$10,000.

13 Second, the funds used in the transaction were the
14 proceeds of specific unlawful activity; namely, the wire fraud
15 conspiracy and substantive wire fraud schemes alleged in Counts
16 One and Two of the indictment.

17 Third, the defendant engaged in these transactions
18 knowingly and willfully.

19 Fourth, that the funds traveled in interstate
20 commerce.

21 THE COURT: So let's just stop there on the elements.

22 I want to make sure that you understand, Mr. Abraham,
23 that if you were to go to trial, the government would need to
24 prove all of those elements beyond a reasonable doubt before
25 you could be convicted of those crimes.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now I'm going to discuss the maximum
4 penalties. The maximum is the most that could possibly be
5 imposed. It doesn't necessarily mean that that is the sentence
6 you will receive, but you have to understand that by pleading
7 guilty, you are exposing yourself to the possibility of
8 receiving any combination of punishments up to the maximums I'm
9 about to describe. So I just want to confirm with the parties
10 that with respect to Counts One and Two, do you agree that the
11 maximum term of imprisonment is 20 years, there's a maximum
12 term of supervised release of three years, and a maximum fine
13 of a million dollars. Is that correct?

14 MS. KAMAL: That's correct.

15 THE COURT: All right. I'm just going to slow that
16 down a little bit, Mr. Abraham.

17 So with respect to your liberty for both of Count One
18 and Count Two, the maximum term of imprisonment for that crime
19 is 20 years in prison.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Any term of imprisonment may be followed
23 by a term of supervised release of up to three years.
24 Supervised release means that if you're sentenced to prison,
25 after you're released from prison, you will be subject to

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1 supervision of the probation department. You will be required
2 to obey certain rules. And if you violate those rules, you can
3 be returned to prison without a jury trial to serve additional
4 time even beyond your original sentence.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: You should also understand that there is
8 no parole in the federal system. So if you're sentenced to
9 prison, you will not be released early on parole, although
10 there is a limited opportunity to earn credit for good
11 behavior. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: In addition to these restrictions on your
14 liberty, the punishment for both of the crimes, both Counts One
15 and Two, includes certain financial penalties. The maximum
16 allowable fine is \$1 million, twice the gross pecuniary gain
17 derived from the offense, or twice the gross pecuniary loss to
18 persons other than yourself resulting from the offense.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: I'm also required to impose a mandatory
22 special assessment of \$100 for each count. So that's \$200 for
23 Counts One and Two, and I'll talk about Count Three in a
24 minute, but that will be for that as well.

25 In addition, I must order restitution to any persons

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1 or entities injured as a result of your criminal conduct, and I
2 can order you to forfeit all property derived from the offense
3 or used to facilitate the offense.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that those are the
7 maximum penalties for both Count One and Count Two?

8 THE DEFENDANT: Yes.

9 THE COURT: Is Mr. Abraham now being prosecuted or, to
10 the extent that you know, investigated in any other
11 jurisdiction?

12 MS. KAMAL: No, your Honor.

13 THE COURT: Now let's talk about Count Three.

14 The maximum sentence for Count Three is what?

15 MS. KAMAL: Ten years, your Honor.

16 THE COURT: And that's three years of supervised
17 release?

18 MS. KAMAL: Yes, your Honor.

19 THE COURT: And the fine, is that \$250,000 or is it
20 more?

21 MS. KAMAL: It is \$250,000, your Honor, but the
22 alternative fine provisions also apply.

23 THE COURT: Thank you.

24 Now let's just talk about Count Three, which is the
25 count that charges you with monetary transactions involving

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1 crime proceeds. The maximum allowable sentence is ten years in
2 prison for this crime. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And I already talked about supervised
5 release. Do you recall that?

6 THE DEFENDANT: Yes.

7 THE COURT: For this crime, the maximum term of
8 supervised release is a term of three years in prison -- the
9 maximum allowable fine -- excuse me -- is three years of
10 supervised release. I misspoke.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: But again, there's a ten-year maximum for
14 a prison term.

15 And then with respect to the fine, the maximum
16 allowable fine for this crime is \$250,000, twice the gross
17 pecuniary gain derived from the offense, or twice the gross
18 pecuniary loss to persons other than yourself resulting from
19 the offense.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: I'm also, as I said earlier, required to
23 impose the mandatory special assessment of \$100, and for this
24 crime as well, I must order restitution to any persons or
25 entities injured as a result of your criminal conduct. I can

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1 order you to forfeit all property derived from the offense or
2 used to facilitate the offense.

3 Do you understand that those are the maximum penalties
4 for Count Three?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, you should be aware that the
7 punishments that I just described are those that may be part of
8 a sentence, but being convicted of a felony may have other
9 consequences. Are you a United States citizen?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. So then you should understand that
12 as a result of your guilty plea, you may lose certain valuable
13 civil rights to the extent that you have them now, like the
14 right to vote, the right to hold public office, the right to
15 serve on a jury, and the right to possess any kind of firearm.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, in imposing sentence, federal judges
19 are required to consider the recommendations of the Federal
20 Sentencing Guidelines. The guidelines are a complicated set of
21 rules for determining an appropriate sentence. Although judges
22 must take into account the Sentencing Guidelines when
23 determining a sentence, in the end the judge is required to
24 give the sentence that she believes best satisfies the purposes
25 of the criminal law as set forth in a provision of the law as

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1 18 United States Code, section 3553(a), even if that's higher
2 or lower than the guidelines recommendation.

3 Do you understand all of that?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you discussed Sentencing Guidelines
6 with your attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that they are only
9 recommendations to the Court?

10 THE DEFENDANT: Yes.

11 THE COURT: I don't think I received a Pimentel letter
12 in this case. Did you submit one? I know this was all last
13 minute but did you submit one?

14 MS. KAMAL: I did not, your Honor.

15 THE COURT: I think -- do you have a guidelines
16 calculation that you can provide to Mr. Abraham? Because I
17 think it's important for him to have an understanding of the
18 guidelines range consistent with the principle behind the
19 Pimentel case to have an understanding of the guidelines range
20 that he's facing.

21 MS. KAMAL: I can represent to the Court that there
22 have been extensive discussions with defense counsel regarding
23 various ways of calculating Mr. Abraham's exposure. I believe
24 counsel is aware of the government's -- I believe the chief
25 driver of any guidelines calculation here would be the

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1 calculation under 2B1.1. I can confer with counsel right now
2 to ensure that she is aware of the government's maximum
3 position with respect to 2B1.1, but that has been communicated
4 to counsel in the past, and counsel was advised last night that
5 the government would be seeking its maximum position under the
6 guidelines were the defendant to plead open here today.

7 THE COURT: Ms. Harris.

8 MS. HARRIS: Your Honor, I can confirm what the
9 government represented. I think part of the -- it may make
10 sense not to sort of lock in everyone's precise position with
11 respect to the enhancement under 2B1.1 because there are a
12 number of legal and factual issues that I think will ultimately
13 drive what the appropriate enhancement is, but it's fair to say
14 that the range of that enhancement could be ultimately anywhere
15 from close to zero to \$15 million depending on resolution of
16 several complex issues. So I think my client -- my client
17 understands that, and you can confirm that, but obviously
18 that's a very big swing. It's part of the reason why we are --
19 and I apologize for the late notice with respect to pleading
20 open to the indictment, but there are just -- he's accepting
21 responsibility for all of the factual underpinnings, but there
22 are certain issues that need to be resolved before that
23 enhancement will be fixed.

24 THE COURT: That's fine. And of course he is
25 welcome -- he is free, of course, to plead guilty open to the

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1 indictment, but I do think it's important for the record I
2 don't know if legally we need a Pimentel letter. It seems,
3 Ms. Harris, that you appear to be waiving it. I don't want to
4 speak for you. But I do think the government needs to state
5 its position as to at least its understanding of what
6 Mr. Abraham's guidelines look like. And if you want to put
7 caveats to that depending on some of the issues that have been
8 in debate, you can do that too, but I do think it's important
9 to get that on the record and make sure Mr. Abraham understands
10 it.

11 MS. KAMAL: Your Honor, if the Court can give me five
12 minutes.

13 THE COURT: Absolutely.

14 MS. KAMAL: I can do that right now. I would just
15 want to make sure that I've covered all the bases.

16 THE COURT: Why don't we take a break.

17 Ms. Harris, I understand that means the government is
18 not locked into their position, and you can feel free to
19 advocate to the government to move its position from where it
20 might be, but I do think it's very important for the record
21 that Mr. Abraham know what the government's position is. And
22 what I would normally say when I have a Pimentel letter is that
23 this is the government's current position, and it may change
24 its position. And I'm going to tell Mr. Abraham that, but I
25 still think it's important to get that on the record.

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1 Why don't we take a five minute break, and why don't
2 you just tell me when you're ready to proceed.

3 MS. KAMAL: Will do, your Honor.

4 THE COURT: Thank you.

5 (Recess)

6 THE COURT: Just so you understand, I want to make
7 sure you understand what we're talking about, Mr. Abraham.

8 In a case where a defendant is not pleading guilty
9 pursuant to a plea agreement, the government writes what's
10 called a Pimentel letter. It's just a letter that was named
11 after the name of a case. And the idea is for the government
12 to explain how it believes the guidelines apply to your case so
13 that you have an expectation of what their position will be.
14 They can change their position if they want to, but it's
15 important for you to have that expectation and discuss it with
16 your lawyer, their present opinion. Does that all make sense?

17 THE DEFENDANT: Yes.

18 THE COURT: Ms. Harris, do you have any objection to
19 having the Pimentel letter essentially be presented in an oral
20 fashion instead of a formal letter because we can adjourn this
21 proceeding and meet again?

22 MS. HARRIS: No. That's fine, Judge.

23 THE COURT: All right.

24 MS. KAMAL: So, your Honor, the government's position
25 with respect to the defendant's exposure is as follows:

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1 Notwithstanding the fact that the defendant is charged
2 in three counts, these three counts group with the base offense
3 level of the grouped counts being seven, the government would
4 see fit to apply an application of the sophisticated means
5 guidelines which increases the base offense level to 9. The
6 government would then under 2B1.1 determine that the intended
7 or attempted loss here was greater than \$9.5 million but less
8 than \$25 million, which would enhance the base offense level
9 from what was 9 to 29 now for a total offense level of 29. The
10 government determines that the defendant has a Criminal History
11 Level of I. At the present time, that would result in an
12 offense level of 29, and a Category I Criminal History
13 resulting in a guidelines range of 87 to 108 months.

14 THE COURT: How would that be changed with the new
15 amendment?

16 MS. KAMAL: With the new amendment --

17 THE COURT: Reduced by two levels?

18 MS. KAMAL: -- it would be reduced by two points, your
19 Honor, that's correct, to 27.

20 THE COURT: Sorry.

21 MS. HARRIS: Although I don't think the calculation
22 takes into account the three points for acceptance yet.

23 THE COURT: Sorry. Go on.

24 MS. KAMAL: It does not.

25 THE COURT: You keep going. I didn't mean to

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1 interrupt.

2 MS. KAMAL: Not to worry.

3 So, as an initial matter, the calculation of the
4 guidelines with the offense level of 29, a Criminal History
5 Category of I, under the current guidelines regime would result
6 in a sentencing range of 87 to 108 months.

7 As the Court noted, and as defense counsel has noted,
8 this does not take into account either (A) the amendments to
9 the guidelines that are currently pending. At the present
10 time, it does appear to the government that the defendant would
11 be eligible for the two-point reduction in offense level
12 applicable to certain first-time offenders which would reduce
13 his criminal history -- which would reduce -- forgive me -- the
14 offense level from 29 to 27. It also does not take into
15 account acceptance of responsibility.

16 THE COURT: Do you have any reason to believe that the
17 government would not be acknowledging that the defendant has
18 indeed accepted responsibility and would get the three points
19 off for that.

20 MS. KAMAL: Your Honor, I can't take a position on
21 that point at this time.

22 THE COURT: Okay.

23 So, Ms. Harris, do you want to take a minute and
24 discuss that with Mr. Abraham and just make sure he understands
25 what the government just stated?

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1 MS. HARRIS: It's consistent with the discussions that
2 we have had with our client, your Honor, so you can allocute
3 with him directly, but he is ready to proceed.

4 THE COURT: Okay.

5 MS. KAMAL: If I may, your Honor?

6 THE COURT: Please.

7 MS. KAMAL: I would also just -- I recognize the Court
8 stated this previously on the record, but on behalf of the
9 government, I would reserve the right to change the
10 government's position at sentencing and in the future once we
11 have had a chance to take a closer look at both the guidelines
12 and all the facts as they are determined at the sentencing.

13 THE COURT: I was just about to say that again.

14 Mr. Abraham, I just want to make sure you
15 understand -- do you understand everything the government said?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. So that's the position right now as
18 to how the government believes the guidelines apply to your
19 case. Right now, as just noted, they are indicating that they
20 believe a guidelines range between 87 and 108 months is the
21 appropriate range. But I want to just confirm, and I know I
22 said it a minute ago, but that's the prosecutor's present
23 position. The government can change its mind, and that
24 representation doesn't represent any kind of binding agreement
25 or promise. Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: Even if the prosecutor does not change her
3 mind, or the government change its mind, in the end the
4 sentence is up to me. I may determine that a different
5 guidelines range is applicable, or I may conclude that a higher
6 or lower sentence than what is provided for in the guidelines
7 is justified.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Has anyone threatened, bribed, or forced
11 you to plead guilty?

12 THE DEFENDANT: No.

13 THE COURT: Has anyone offered you any inducement to
14 plead guilty?

15 THE DEFENDANT: No.

16 THE COURT: Has anyone made any promise to you as to
17 what your sentence will be?

18 THE DEFENDANT: No.

19 THE COURT: Do you understand that even if anyone
20 attempted to predict what your sentence will be, that that
21 prediction could be wrong. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: I say that because no one right now knows
24 what your sentence will be. Your lawyer doesn't know. The
25 prosecutor doesn't know. I don't know. That won't be

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1 determined until I get the submissions of the parties, I get
2 the presentence report prepared by the probation department, I
3 do my own independent calculation under the Sentencing
4 Guidelines, and then determine whether there is a basis for not
5 following the guidelines' recommendation. So even if your
6 sentence is different from what people predicted or what you
7 had hoped for, expected, that won't be a basis to withdraw your
8 plea.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: So now that you have been advised -- let
12 me ask you, I actually didn't ask about forfeiture.

13 In the indictment, there is a forfeiture allegation
14 which reads in part that: As a result of committing the
15 offenses alleged in Counts One and Two of this indictment, that
16 you shall forfeit to the United States pursuant to Title 18
17 United States Code, Section 981(a)(1)(C) and Title 28, section
18 2461, any and all property, real or personal, that constitutes
19 or is derived from proceeds traceable to the commission of said
20 offenses, including, but not limited to, a sum of money in
21 United States currency representing the amount of proceeds
22 traceable to the commission of said offenses. And then there
23 is a similar forfeiture allegation for Count Three, and it has
24 what we call a substitute assets provision.

25 Have you discussed this forfeiture allegation with

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1 your attorney?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you admit to the forfeiture allegation?

4 THE DEFENDANT: Yes.

5 THE COURT: So now that you have been advised of the
6 charges against you, and the possible penalties you face, and
7 the rights you're giving up, is it still your intention to
8 plead guilty to these three charges?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, I am going to ask you the official
11 question with respect to each of the counts. Then I'm going to
12 ask you to describe in your own words what you did that makes
13 you believe you are guilty of these crimes.

14 With respect to Count One of indictment, how do you
15 plead?

16 THE DEFENDANT: Guilty.

17 THE COURT: With respect to Count Two of the
18 indictment, how do you plead?

19 THE DEFENDANT: Guilty.

20 THE COURT: With respect to Count Three of the
21 indictment, how do you plead?

22 THE DEFENDANT: Guilty.

23 THE COURT: So tell me in your own words what makes
24 you believe that you are guilty of these three counts?

25 THE DEFENDANT: In 2018, I agreed with another person

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1 how to obtain money from Amazon by making false requests from
2 Amazon. I received purchase orders from Amazon for certain
3 products. I then requested that Amazon change the item
4 information to different product for a better customer
5 experience. This was false. By doing so, I obtained certain
6 money from Amazon for products that were not the products they
7 ordered. After I received the money from Amazon, I transferred
8 some of it between accounts that I held in my own name at
9 different banks. The amounts exceeded \$10,000. I knew what I
10 was doing was wrong and I deeply regret my actions.

11 THE COURT: When you did this, where were you
12 physically? Where did this happen?

13 THE DEFENDANT: Usually, the office like -- yeah.

14 THE COURT: Where is your office?

15 THE DEFENDANT: Rockland County.

16 THE COURT: Does the government want to make a
17 representation as to venue? I also want to talk about the wire
18 element too.

19 MS. KAMAL: Yes, your Honor. The government would
20 proffer that both that communications, electronic
21 communications by email and through the victim's online retail
22 portal, that those involved communications in interstate
23 commerce because the victims' servers and accounts were outside
24 the State of New York where the defendants' businesses were
25 located in the Southern District of New York.

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1 I would also proffer with respect to the monetary
2 transactions that the defendant's accounts were located in
3 banking institutions in the Southern District of New York,
4 whereas the funds received from the victim in this case were
5 located outside the State of New York

6 THE COURT: Are there any additional questions you
7 think I should ask?

8 MS. KAMAL: If I may ask the court reporter to read
9 back the first part of the allocution. He spoke quickly.

10 THE COURT: I'm going to second that. If the court
11 reporter could do that, please. Thank you.

12 (Read back)

13 MS. KAMAL: May I have a moment to speak with defense
14 counsel?

15 THE COURT: Yes. Let me ask one quick question. Were
16 the communications that you had with Amazon by way of wire,
17 were they on the computer? Were they on email? How did you
18 communicate with Amazon?

19 THE DEFENDANT: Computer internal support.

20 THE COURT: Okay.

21 Yes go ahead.

22 MS. KAMAL: Thank you.

23 (Counsel consult)

24 MS. KAMAL: Thank you, your Honor.

25 THE COURT: Are there any additional questions you'd

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1 like me to ask?

2 MS. KAMAL: Yes.

3 MS. HARRIS: Yes. I think in light of the colloquy I
4 just had with the AUSA, I think -- I want to make clear for the
5 record, and I think this will maybe resolve issues with respect
6 to the acceptance of responsibility, that some of the
7 indictment talks about overshipping. There are legal issues
8 that were raised in our motions to dismiss related to whether
9 or not that conduct satisfies the elements of wire fraud and
10 whether loss is therefore -- from our perspective, whether the
11 losses associated with that conduct should be appropriately
12 included in the guidelines calculation. But I want to make
13 clear, and my client can do it himself on the record, or I can
14 do it as his agent on his behalf here, that specific factual
15 conduct with respect to overshipping is not what we are going
16 to be litigating, and he does accept responsibility for that
17 conduct, but we seek a legal sort of ruling whether or not that
18 conduct satisfies the elements of wire fraud.

19 THE COURT: So you will be seeking that ruling in
20 connection with sentencing or you did previously when you filed
21 the motion to dismiss.

22 MS. HARRIS: Your Honor, the motion was -- we filed
23 our motion and then plea negotiations ensued, so we can after
24 the plea today, I think the government and we will confer and
25 figure out the best way to tee up these issues and what order

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1 to do so and then probably submit a letter to the Court with a
2 proposal with respect to briefing and/or any necessary Fatico
3 issues. So but I guess just to sort of narrow the issues with
4 respect to the allocution, he could make a short statement with
5 respect to that conduct or this colloquy can suffice.

6 THE COURT: I'd rather hear from him. Thank you.

7 THE DEFENDANT: I also overshipped products to Amazon.
8 What I mean by overshipped is that Amazon ordered and reordered
9 certain items on a regular basis, and I sent them those exact
10 items but in amounts exceeding what they ordered. I then
11 accurately invoiced Amazon for the amounts I shipped, including
12 the overshipped items, and Amazon paid for some of those
13 purchase orders. Again, I do deeply regret my actions.

14 THE COURT: Are there any additional questions the
15 government thinks I should ask?

16 MS. KAMAL: No, your Honor. That suffices for the
17 government's purposes. Thank you.

18 THE COURT: Can you please summarize what the
19 government's evidence would be if you were to go to trial
20 against Mr. Abraham.

21 MS. KAMAL: Yes, your Honor.

22 If the government were to proceed to trial, it would
23 present evidence, data, and communications from more than a
24 dozen seized devices from the defendants, including
25 Mr. Abraham, which reflect, among other things, communications

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1 between the defendants regarding how to successfully execute
2 the scheme, extract the maximum amount of money possible from
3 the victim in the shortest period of time, and how to avoid
4 detection.

5 The government would also put forward data and
6 documents from the victim reflecting the manipulated orders,
7 the manipulated prices, the manipulated products, and the
8 overshipping of the goods that were ultimately -- overshipping
9 meaning excessive quantities of goods that were ultimately sent
10 from the defendant and his co-conspirators to the victim.

11 The government would also offer the financial records
12 from third parties that would reflect the flow of funds and
13 show the funds traveling from the victim's bank accounts to the
14 defendants and then subsequent transactions reflecting the
15 movement of proceeds among the defendants accounts.

16 THE COURT: Ms. Harris, do you agree that there is a
17 sufficient factual predicate for the guilty plea?

18 MS. HARRIS: I do, your Honor.

19 THE COURT: So, Mr. Abraham, because you acknowledge
20 that you are in fact guilty as charged in the indictment, and
21 because I'm satisfied that you understand your rights,
22 including your right to go to trial, and that you are aware of
23 the consequences of your plea, including the sentence which may
24 be imposed for each of the three counts, and because I find
25 that you are knowingly and voluntarily pleading guilty, I

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1 accept your guilty plea to Counts One, Two and Three of the
2 indictments.

3 The probation department will want to interview you in
4 connection with a presentence report that it will prepare.

5 Ms. Harris, would you like to be present for the
6 interview?

7 MS. HARRIS: I would, your Honor. Thank you.

8 THE COURT: Good. Thanks.

9 If you choose to speak to the probation department,
10 Mr. Abraham, just make sure that everything you say is truthful
11 and accurate. I will read the presentence report very
12 carefully before imposing sentence. So please read it
13 carefully as well. If there are any issues in it, mistakes or
14 other issues that you want to raise, just tell your lawyer so
15 she can raise them with me.

16 And we have scheduled a sentencing for March 14 at
17 2:00 p.m. I do want to refer counsel to my individual rules
18 and practices in criminal cases available on the court's
19 website. They contain some rules regarding sentencing
20 submissions. Defense submissions are due two weeks prior to
21 sentencing, and the government's submission is due one week
22 prior to sentencing.

23 Of course, if there are issues that need to be -- if
24 we need to have a Fatico hearing, for example, if there are
25 disputed issues with respect to forfeiture or restitution and

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1 you would like to brief them earlier, or just raise them for me
2 earlier, feel free to do so, particularly with respect to a
3 Fatico. We would obviously need to schedule that, so it would
4 be helpful for me if you can let me know in advance of the
5 sentencing how much time I need to schedule what you think will
6 happen, okay?

7 MS. HARRIS: We will, your Honor.

8 THE COURT: Is there any objection on the government's
9 part to continuing Mr. Abraham's conditions of bail?

10 MS. KAMAL: No, your Honor.

11 THE COURT: Any other applications at this time?

12 MS. KAMAL: Your Honor, at this time I just want to
13 make clear one sort of housekeeping issue with respect to the
14 charging instrument here.

15 As everybody is aware, we had thought we would be
16 proceeding pursuant to a plea agreement and a superseding
17 information, and obviously we went forward today on the basis
18 of the indictment. The superseding information that was
19 previously filed with respect to the guilty plea of Zishe
20 Abraham, Mr. Yoel Abraham's co-conspirator, named Mr. Yoel
21 Abraham in that information. Obviously, that information was
22 only entered on the docket with respect to Mr. Zishe Abraham
23 who pled guilty to it. But I wanted obviously to point out for
24 the Court that there is an information that is on the docket
25 that names Mr. Yoel Abraham, but he has obviously not waived

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1 indictment, and were he to waive indictment here today, at
2 sentencing the government would not be dismissing the
3 underlying indictment, and we've proceeded as though we are
4 going ahead on the initial indictment in this matter.

5 THE COURT: Understood. Is there anything you think
6 we should do to remedy that?

7 MS. KAMAL: So I don't think so, your Honor. I mean,
8 I've looked at Rule 7(b), and it does not appear to me that the
9 superseding information could be operative against the
10 defendant since he has not waived here today. And obviously
11 we're having this colloquy now, and we're all aware of where we
12 stand, but I did want to flag it for the Court. I will give it
13 some additional thought, and if I think there is any sort of
14 housekeeping issue, any amendment or correction that needs to
15 happen, I will obviously let the Court know. But for now I
16 think it is fine the way we proceeded today, but I did want the
17 record to reflect that.

18 THE COURT: That's helpful. Thanks. I think it would
19 be helpful if the two of you speak, counsel, and just submit a
20 letter to me on the record, just, you know, file it on the
21 docket indicating what your understanding is and what you
22 jointly think is the best course of action. Obviously, if you
23 disagree about the best course of action, you can indicate that
24 in a letter. But I think it is prudent to have a letter on the
25 docket in addition to this colloquy. Okay?

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1 MS. KAMAL: Certainly, your Honor.

2 THE COURT: Any further applications at this time?

3 MS. HARRIS: Nothing further. Thank you very much.

4 THE COURT: Thank you. We're adjourned.

5 (Adjourned)

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